

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application

Inventor(s): James F. Zucherman, et al.

Appl. No.: 10/816,173

Confirm. No.: 7894

Filed: April 1, 2004

Title: CERVICAL INTERSPINOUS PROCESS  
DISTRACTION IMPLANT AND METHOD OF  
IMPLANTATION

PATENT APPLICATION

Art Unit: 3733

Examiner: Anuradha Ramana

**Customer No. 23910**

**TRANSMITTAL LETTER RE INFORMATION DISCLOSURE STATEMENT  
UNDER 37 C.F.R. §1.56**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

It is requested that the information identified in this statement be considered by the Examiner and made of record in the above-identified application. This statement is not intended to represent that a search has been made or that the information cited in the statement is, or is considered to be, material to patentability as defined in 37 C.F.R. §1.56. If this is a continuation, divisional or continuation-in-part application, it is understood that the Examiner will consider all information which was considered by the Office in a parent application. MPEP §609. Such information therefore is not listed herein unless it is desired that the information be printed on a patent issuing from the subject application.

***Enclosed with this statement are the following:***

- ☒ Form PTO-1449. The Examiner is requested to initial the form and return it to the undersigned in accordance with M.P.E.P. §609.
- ☒ As allowed under 37 C.F.R. § 1.98(a)(2)(ii), no copies of the U.S. patents and U.S. patent application publications are enclosed, unless required by the office.
- ☐ As allowed under 37 CFR §1.98(d), copies of cited documents noted with an asterisk are not enclosed because they were previously submitted in U.S. Patent Application No. \_\_\_\_\_, which is relied on for an earlier effective filing date under 35 USC §120, and which included an Information Disclosure Statement that complies with 37 CFR §1.98(a) through (c).
- ☒ A copy of an International Search Report dated November 22, 2006, for Application No. PCT/US06/10521.
- ☐ A copy of an International Preliminary Examination Report dated \_\_\_\_\_ for Application No. \_\_\_\_\_.

— If any of the cited/submitted documents is in a foreign language, a concise explanation of relevance is provided pursuant to 37 C.F.R. §1.98(a)(3)(i). For foreign language documents cited in a search report by a foreign patent office, the requirement for a concise explanation of relevance is satisfied by the submission herewith of an English language version of the search report. MPEP §609A(3). If a written English-language translation of a non-English language document, or portion thereof, is within the possession, custody or control of, or is readily available to any individual designated in §1.56(c), a copy of the translation accompanies this statement, 37 C.F.R. §1.98(a)(3)(ii), and satisfies the requirement for a concise explanation of relevance, MPEP §609A(3).

***This statement should be considered because:***

✓ **37 C.F.R. §1.97(b).** This statement qualifies under 37 C.F.R. §1.97, subsection (b) because:

- (1) It is being filed within three months of the filing date of an application other than a continued prosecution application under § 1.53(d);  
-- OR --
- (2) It is being filed within 3 months of entry of a national stage;  
-- OR --
- (3) It is being filed before the mailing date of the first Office Action on the merits,  
-- OR --
- (4) It is being filed before the mailing date of the first Office Action after the filing of a Request for Continued Examination under 37 C.F.R. §1.114.

— **37 C.F.R. §1.97(c).** Although it may not qualify under subsection (b), this statement qualifies under 37 C.F.R. §1.97, subsection (c) because:

- (1) It is being filed before the mailing date of a FINAL Office Action, a Notice of Allowance, or an action that otherwise closes prosecution in the subject application, whichever occurs first.  
— AND (check at least one of the following) —
  - (a) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(c).  
— OR —
  - (b) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

— **37 C.F.R. §1.97(d).** Although it may not qualify under subsection (b) or (c), this statement qualifies under 37 C.F.R. §1.97, subsection (d) because:

- (1) It is being filed on or before payment of the Issue Fee;  
— AND —
- (2) It is accompanied by a STATEMENT as set forth in 37 C.F.R. §1.97(e);  
— AND —
- (3) It is accompanied by the \$180 fee set forth in 37 C.F.R. §1.17(p).

— ***PTA Statement under 37 C.F.R. §1.704(d).*** Each item of information contained in the *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart application and this communication was not received by any individual designated in §1.56(c) more than thirty days prior to the filing of the *Information Disclosure Statement*.

— **37 C.F.R. §1.97(e)(1).** THE UNDERSIGNED ATTORNEY HEREBY STATES THAT each item of information contained in this *Information Disclosure Statement* was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this *Information Disclosure Statement*; or

— **37 C.F.R. §1.97(e)(2).** THE UNDERSIGNED ATTORNEY HEREBY STATES THAT no item of information contained in this *Information Disclosure Statement* was cited in a communication from a foreign patent office in a counterpart foreign application and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this *Information Disclosure Statement* was known to any individual designated in §1.56(c) more than three months prior to the filing of this statement.

✓ ***Fee Authorization.*** The Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 06-1325.

Respectfully submitted,

FLIESLER MEYER LLP

Date: January 31, 2007

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Form PTO-1449 (Substitute)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	Attorney Docket Number SPMT-01087US1	Application/Patent Number 10/816,173
Information Disclosure Statement <b>BY APPLICANT</b> (Use several sheets if necessary)		Applicant/Patent Owner: James F. Zucherman, et al.	
		Filing/Issue Date: April 1, 2004	Group Art Unit: 3733

U.S. PATENTS						
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Filing Date
/PP/	1.	6,045,552	04/04/2000	Zucherman	606	061
	2.	6,074,390	06/13/2000	Zucherman	606	061
	3.	6,090,112	07/18/2000	Zucherman	606	061
	4.	6,149,652	11/21/2000	Zucherman	606	061
	5.	6,152,926	11/28/2000	Zucherman	606	061
	6.	6,156,038	12/05/2000	Zucherman	606	061
	7.	6,183,471 B1	02/06/2001	Zucherman	606	061
	8.	6,235,030 B1	05/22/2001	Zucherman	606	061
	9.	6,238,397 B1	05/29/2001	Zucherman	606	061
	10.	6,280,444 B1	08/02/2001	Zucherman	606	061
	11.	6,332,882 B1	12/25/2001	Zucherman	606	061
	12.	6,332,883 B1	12/25/2001	Zucherman	606	061
	13.	6,371,984 B1	04/16/2002	Van Dyke	623	11.11
	14.	6,379,355 B1	04/30/2002	Zucherman	606	061
	15.	6,416,776 B1	07/09/2002	Shamie	424	423
✓	16.	6,419,676 B1	07/16/2002	Zucherman	606	061

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U.S. PATENTS							
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/PP/	17.	6,419,677 B1	07/16/2002	Zucherman	606	061	01/04/2001
	18.	6,440,169	08/27/2002	Elberg et al.	623	17.16	10/17/2000
	19.	6,451,019 B1	09/17/2002	Zucherman	606	061	05/26/2000
	20.	6,451,020 B1	09/17/2002	Zucherman	606	061	12/07/2000
	21.	6,478,796 B1	11/12/2002	Zucherman	606	061	03/15/2001
	22.	6,500,178 B1	12/31/2002	Zucherman	606	061	07/27/99
	23.	6,514,256 B1	02/04/2003	Zucherman	606	61	03/15/2001
	24.	6,582,433 B1	06/24/2003	Yun	606	061	04/09/2001
	25.	6,626,944	9/30/2003	Taylor	623	17.16	10/23/2000
	26.	6,641,585	11/04/2003	Sato et al.	606	061	09/20/2001
	27.	6,652,527 B2	11/25/2003	Zucherman	606	061	10/18/2001
	28.	6,652,534 B2	11/25/2003	Zucherman	606	102	10/16/2001
	29.	6,695,842 B2	02/24/2004	Zucherman	606	061	10/26/2001
	30.	6,699,246 B2	03/02/2004	Zucherman	606	061	04/26/2001
▼	31.	6,699,247 B2	03/02/2004	Zucherman	606	061	04/26/2001

Form PTO-1449 (Substitute)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	Attorney Docket Number SPMT-01087US1	Application/Patent Number 10/916,173
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U.S. PATENTS							
Examiner Initial		Patent Number	Issue Date	First Named Inventor	Class	Subclass	Filing Date
/PP/	32.	6,712,819 B2	03/30/2004	Zucherman	606	061	10/18/2001
	33.	6,746,485 B1	06/08/2004	Zucherman	623	17.16	02/16/2000
	34.	6,764,491	07/20/2004	Frey et al.			
	35.	6,796,983 B1	09/28/2004	Zucherman	606	061	01/08/2001
	36.	6,902,566 B2	06/07/2005	Zucherman	606	061	03/05/2001
	37.	6,926,728 B2	08/09/2005	Zucherman et al.	606	190	10/16/2001

U.S. PATENT PUBLICATIONS			
Examiner Initial		Patent Application Publication Number	Publication Date

PENDING U.S. PATENT APPLICATIONS				
Examiner Initial		Application Number	Filing Date	Petition to Expunge? Yes/No

FOREIGN PATENT DOCUMENTS							
Examiner Initial		Document Number	Publication Date	Country	Class	Subclass	Trans- lation Yes/No
/PP/	38.	WO 02/051326	07/2002	International			

OTHER DOCUMENTS (Include author (if any), title, publisher and place of publication, date and pertinent pages)	
39.	International Search Report for PCT/US06/10521 mailed on November 22, 2006, 7 pages.

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Examiner /Pedro Philogene/	Date Considered 03/26/2007
<p>*EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609 Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</p> <hr/> <p>*1 = Copy not submitted because it was submitted in prior application SN __/____, filed _____, 20____, relied on under 35 USC §120.</p> <p>*2 = Copy not submitted because it was submitted in prior application SN __/____, filed _____, 20____, relied on under 35 USC §120.</p>	